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STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

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Analysis of Enrolled Senate Bill 522

Topic: Local Consent for Public Utilities
Sponsor: Senator McManus
Co-Sponsors: Prusi, Hammerstrom, Goschka, Allen, Kuipers, Johnson, and Schauer
Committee: Energy and Technology

Date Introduced: May 19, 2005

Date Enrolled: June 30, 2005

Date of Analysis: June 28, 2005

Position:

The Department of Labor and Economic Growth is neutral on this bill.

Problem/Background:

On December 6, 2001, Wolverine Pipe Line Company filed an application with the Public Service Commission seeking authority to construct, operate, and maintain a 12-inch pipeline system, replacing the old 8-inch line from Stockbridge, for the transportation of liquid petroleum products that would increase the flow of gasoline to 39 Michigan counties. The proposed pipeline would be about 26 miles long and would consist of three segments; the most controversial being a segment along Interstate 96 through the south part of Lansing. Wolverine intends to construct this pipeline for the purpose of not only increasing gasoline flow, but also to reduce the need for tanker trucks to transport gasoline across the state of Michigan. This could potentially be important considering the ongoing gasoline price spikes in Michigan aggravated when the Alma refinery shut down, leaving Michigan with just one refinery in Detroit.

Wolverine sought approval from the Michigan Public Service Commission to construct the 26 mile long pipeline. The City of Lansing opposed the location of the proposed pipeline within its jurisdiction. The City of Lansing argued that the pipeline will be unsafe, especially in light of the worst oil spill in Mid-Michigan history occurring in Blackman Township in June 2000 from a Wolverine pipeline. The City also argued that the placement is a violation of Equal Protection (environmental discrimination based upon race), and most of all, that Wolverine must obtain prior consent from the City of Lansing before filing an application for approval as mandated by MCL 247.183. Wolverine argued that the pipeline was indeed safe, did not violate equal protection clauses in the Federal and State constitutions, and that the statute does not indicate that consent must be obtained *prior* to application. The case was heard before the MPSC with two full days of testimony. In July of 2002, the MPSC agreed with Wolverine and approved the

construction of the pipeline stating that Wolverine had demonstrated that the pipeline was safe, reasonable, and filled a public need.

The Lansing City Council officially rejected the pipeline proposal by resolution in August of 2002. The City of Lansing then filed an appeal to the Michigan Court of Appeals seeking to overturn the MPSC approval arguing that the MPSC misinterpreted the statute, was wrong in finding no discrimination, and wrong in its finding that the pipeline was safe. Wolverine argued that not only did the MPSC not misinterpret the statute, but that based on the specific language of MCL 247.183, the statute doesn't apply to Wolverine's proposal whatsoever. The Court held that the statute doesn't require such consent to be obtained *before* seeking the MPSC's approval. But, it also held that the statute *requires* the consent of the affected local governments before construction can begin.

This decision was appealed by both the City of Lansing and Wolverine to the Michigan Supreme Court where the lower court's opinion was affirmed on June 9, 2004. The Court interpreted the statute in favor of Lansing and concluded that the language of the statute does not provide an exception for pipelines in a limited access highway from the general requirement of local consent. As a result, construction of the proposed pipeline has been halted.

It should be noted that the Michigan Supreme Court did not decide the case based upon the Michigan Constitution. The Michigan Constitution was referenced in an opinion footnote. This is significant because Lansing claims it continues to have Constitutional protection notwithstanding what the Legislature does with the Statute.

Description of Bill:

The bill would amend Public Act 368 of 1925 to allow certain utilities to construct and maintain utility lines and structures, including pipelines, longitudinally within limited access highway rights-of-way and under any public road, street, or other subsurface that intersects any limited access highway at a different grade without the consent of the local governing body of the city, village, or township.

The bill requires that the utility, as defined in 23 CFR 645.105 (m), would have to comply with standards approved by the Michigan Public Service Commission and the State Transportation Commission that conform to federal laws and regulations.

Currently, Public Act 368 allows for a reasonable charge to a utility by the Department of Transportation to offset a portion of the capital and maintenance expense of the limited access highway. A House amendment requires that if the 1-time installation permit fee does not cover the reasonable and actual costs to MDOT in issuing the permit, the remaining balance assessed against the utility.

Summary of Arguments

Pro:

The bill would allow the Wolverine Pipeline Company to construct a 12-inch petroleum pipeline through a highway right-of-way in the City of Lansing to benefit the general public. Following the closure of the Alma refinery-a significant source of liquid petroleum product in Michigan-Wolverine's 8-inch pipeline has become the primary transportation facility of liquid petroleum in mid and southeastern Michigan. This pipeline has become insufficient in capacity to supply current and future needs. This bill would allow Wolverine to construct a pipeline with nearly twice the capacity.

This pipeline will also benefit the general public by significantly reducing the number of tanker trucks on the highways. It is much safer to transport gasoline by pipeline than by trucks, because trucks have an accident rate 87 times that of pipelines and fires or explosions are 35 times more likely with a truck incident than a pipeline incident.

Proponents argue that the pipeline itself is indeed safe, and so is the route that it will travel. The pipeline exceeds many safety standards of the federal government including the fact that the pipeline will be buried 12-inches deeper than what the federal government requires-reducing the risk of unintentional damage to the pipeline. Secondly, the pipeline will not cross under residences, subdivisions, schoolyards, apartment complexes, and commercial buildings and, according to Wolverine, no residences are located within 50 feet of the pipeline.

Note: There was testimony in both House and Senate committees from a Windsor Township couple who believed their house was located much closer than 50 feet to the proposed pipeline. Following their testimony in the Senate, Public Service Commission staff did some measurements and determined that the couple had measured from the wrong stake and that their home was located over 70 feet from the proposed pipeline.

Proponents also maintain that the pipeline will have a thicker wall than required and will be inspected and maintained on a more frequent basis than required-including aerial surveys to monitor excavation or other activities that could endanger the line. Among other safety devices and procedures, the pipeline will have redundant pressure control devices, will perform ultrasonic pipe wall inspections, have automatic valve shutdown and de-pressurization in case of a leak, and contain cathodic protection to prevent deterioration of the pipe.

Because the pipeline will be located mainly in a highway right-of-way, economic development will not be hindered for it is not likely any development will occur within that particular corridor.

Proponents argue that the bill will not conflict with the Michigan Constitution because article 7, § 29 applies to locally owned highways and roads. Wolverine would be placing its pipeline within the right-of-way of a federally funded highway, so consent of local government is not required.

Response: Opponents argue that the pipeline route will cross local roads where they cross expressways, giving the local government right to consent over the proposed utility.

Con:

The bill allows Wolverine to construct a potentially dangerous pipeline that raises many health, safety, and legal issues. Opponents argue that a leak could ignite a catastrophic fire that would endanger the dense population living nearby and the over 45,000 vehicles that travel through Lansing on I-96 on a daily basis. The threat to ground and surface water is also substantial. According to the Board of Water and Light, the water supply serves over 200,000 people and opponents argue that the water supply could be jeopardized if a leak were to occur. There is also the significant threat of unintentional accidental damage. Placing a utility such as a pipeline in highway right-of-way exposes it to significant threat of rupture due to routine road work. Furthermore, private companies who perform maintenance on their utilities placed in right-of-ways increases the danger of accidental damage. Currently, pipelines are not routinely located next to numerous other utility lines. Placing them in right-of-ways, like Wolverine is proposing, exposes all utilities to potential damage each time one of the other utility companies digs a trench to work on its line. The threat of terrorist acts poses further concern.

Local planning issues also arise with this bill. The placement of utilities in cities without their consent takes away their statutorily given right to plan the development of their communities as they see fit by greatly reducing the control local governments have over matters of local concern. The only entities truly concerned with a city's access to safe drinking water, its master development plan and its ability to respond to a huge fire or other disaster are the villages, towns and cities themselves.

Opponents argue that if the bill is passed, legal issues will arise, resulting in costly litigation. One of the legal issues likely to be raised is that the bill violates Article 7, § 29 of the Michigan Constitution. This provision gives local governments the right to consent regarding the allowance of public utilities within highways and streets of the governing authority.

Response: Proponents of the bill argue that the provision in the Michigan Constitution applies to highways and roads owned locally, the pipeline would be placed within the right-of-way of a federally funded highway, so consent of local government is not required.

Opponents argue that the proposed pipeline route discriminates against minorities. Originally the pipeline was to head through Meridian Township, a mostly white and wealthy area with a similar population density to that of the currently proposed route. The current proposal places the pipeline in an area along I-96 with 20% more minorities and where families average a median income of \$34,000 compared to more than \$80,000 along the Meridian Township route.

Lastly, the bill is too broad in that it affects all types of pipelines. Efforts in both houses to narrow the bill's scope to gasoline pipelines were unsuccessful.

Fiscal/Economic Impact

(a) Department of Transportation

Budgetary: It is estimated that MDOT would experience \$30,000 in costs related to permitting. The House amendment would allow the department to recover its costs.

Revenue: A one-time installation permit fee is required for the longitudinal use of limited access highway rights-of-way. The fee is \$1,000 per mile of longitudinal use of highway rights-of-way, with a minimum permit fee of \$5,000 (five miles).

Comments: If the one-time installation fee did not cover the cost of issuing the permit for the longitudinal use of limited access highway rights-of-way, the Department of Transportation may assess the utility for the remaining balance.

(b) State of Michigan

Budgetary: Undetermined at this time.

Revenue: None.

Comments: Litigation costs are possible if a local government opposes the construction of a utility. Aforementioned permit fee is credited to the State Trunkline Fund.

(c) Local Government

Budgetary: Undetermined at this time.

Revenue: None.

Comments: Litigation costs are possible if a local government opposes the construction of a utility. Construction of more utility lines and structures along limited access highway rights-of-way instead of along easements to local government property may result in a decrease in local government revenue.

Any Other Pertinent Information:

Positions:

Support: The American Petroleum Institute, Michigan Chamber of Commerce, Consumers Energy, Michigan Manufacturers Association, and Indiana and Michigan Power.

Oppose: The Michigan Municipal League, Michigan Townships Association, Michigan Association of Counties, Mayor of Lansing, and several Lansing City Council members.

Administrative Rules Impact:

No new or revised rules will be needed.

